

Reichner Proposal
As Submitted to NCCI January 10, 2011

NCCI estimates that this proposal may impact overall Montana workers compensation system costs according to the table below:

Provision	Low overall % impact	Low overall \$ impact	High overall % impact	High overall \$ impact
Permanent Partial Awards	-7.5%	- \$31M	-3.4%	- \$14M
Permanent Partial Maximum Weeks	+0.8	+\$3M	+1.0	+\$4M
Termination of Medical Benefits	-23.3%	- \$96M	-14.4%	- \$59M
Retroactive Period	+0.3	+\$1M	+0.4	+\$2M
Choice of Physician	-14.3%	-\$59M	-4.4%	-\$18M
Physician Reimbursement	-0.1%	- \$1M	+0.1%	+\$1M

Note that each provision was evaluated in isolation, without taking into account the interaction between the various components. If some or all of these provisions are ultimately enacted, the combined interactions and impacts may result in an overall impact that differs from a simple mathematical combination of the individual impacts described above.

NCCI has analyzed the following sections and determined that they do not have a significant cost impact in Montana:

Section(s)	Description
39-71-118 & 407	Definition of Course and Scope
39-71-741	Settlements
39-71-704	Treatment Guidelines

NCCI has not had sufficient opportunity to evaluate any cost impacts from the Stay at work/Return to work provision.

NCCI focused on the provisions of this bill that are deemed to have an immediate cost impact on Montana workers compensation system. This analysis may be revised if statutory or bill language differs from the language in this proposal.

No effective date was included with this proposal. NCCI assumed an effective date of July 1, 2011. NCCI's estimated cost impacts do not reflect any potential retroactive impacts.

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Summary and Actuarial Analysis

Permanent Partial (PP) Awards, Section 39-71-703

Currently in Montana, an injured worker is entitled to a permanent partial (PP) disability award if the worker has an actual wage loss and has a permanent impairment rating that is more than zero as determined by the latest edition of the American Medical Association (AMA) Guides to Evaluation of Permanent Impairment. This proposal would entitle the worker to a PP disability award, only if that worker has an actual wage loss and a class 2 or higher class of permanent impairment as determined by the second printing of the sixth edition of the AMA Guides to Evaluation of Permanent Impairment.

Currently in Montana, a worker is eligible for an impairment only award if the worker receives an impairment rating as a result of a compensable injury and has no actual wage loss as a result of the injury. This proposal would entitle a worker to an impairment only award if that worker has an actual wage loss and a class 2 or higher class of permanent impairment as determined by the second printing of the sixth edition of the AMA Guides to Evaluation of Permanent Impairment

Since injured workers with "class 1" impairment ratings would no longer receive PP disability or impairment only awards, NCCI estimated the proportion of losses that would be considered class 1 to derive the potential system cost savings under the proposal. In our analysis, NCCI considered two scenarios:

- The first scenario defined class 1 claims as those with an impairment rating of 1% to 5%
- The second scenario defined class 1 claims as those with an impairment rating 1% to 10%¹.

The proportions of PP disability and impairment only award benefits associated with each scenario were 31% and 67%, respectively². PP disability and impairment only awards represent 57.5%³ of PP indemnity benefits. Since PP indemnity benefits represent 69.7%⁴ of indemnity benefits, and indemnity benefits represent 28.0%⁵ of

¹ In selecting these ranges, consideration was given to the mix of AMA Guide editions underlying the impairment rating data used in this analysis

² Based on Montana Department of Labor and Industry (DLI) data for accident years 2005 to 2008

³ Based on a sampling of permanent partial claims from NCCI's Detailed Claim Information for accident years 2003 to 2007

⁴ Based on NCCI Statistical Plan data for the 24 month policy period ending 12/31/2007

⁵ Based on NCCI Financial Call data for policy years 2005 to 2007, trended to 7/1/2011

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total benefits, this translates into an overall system cost impact between -7.5% and -3.4% (see table below).

Impact on PP Awards	Low	High
1. Impact on PP Awards	-67.0%	-31.0%
2. PP Awards % of PP Indemnity Benefits	57.5% ⁶	
3. PP Indemnity Benefits % of Indemnity Benefits	69.7% ⁷	
4. Indemnity Benefits % of Total Benefits	28.0% ⁸	
5. Impact on Montana Workers Compensation System Costs = $\{[(1) \times (2)] \times (3)\} \times (4)$	-7.5%	-3.4%

Permanent Partial Maximum Weeks (Duration), Section 39-71-703

The current Montana statutes specify that the duration of PP indemnity benefits are capped at 375 weeks. This proposal would increase the maximum PP duration from 375 to 400 weeks.

The direct cost impact on PP awards due to the proposed increases in maximum PP claim duration is an increase of 6.7% ($= 400 / 375 - 1$). The impact calculation may be simplified in this way as PP claim duration is calculated by multiplying the (modified) impairment rating by the maximum duration. For the direct impact, NCCI assumed that the average (modified) impairment rating would remain unchanged.

Studies indicate⁹ that significant benefit increases are typically followed by changes in claimant behavior and may lead to increased utilization of the workers compensation (WC) system. In this pricing, NCCI has estimated that an additional increase of 10% to 30% of the direct impact on permanent partial awards could result from such behavioral changes. Specifically, this utilization could result from an increase in the frequency of PP awards, as well as an increase in the average cost of PP claims—as there would be an increased incentive for injured workers to file for PP benefits in Montana and seek higher (modified) impairment ratings in order to receive more benefits.

⁶ Based on a sampling of permanent partial claims from NCCI's Detailed Claim Information for accident years 2003 to 2007

⁷ Based on NCCI Statistical Plan data for the 24 month policy period ending 12/31/2007

⁸ Based on NCCI Financial Call data for policy years 2005 to 2007, trended to 7/1/2011

⁹ For example, see Ward Brooks of WCIRB, "California Workers Compensation Benefit Utilization", 1998; Frank Schmid of NCCI, "Indemnity Benefits Duration, Maximum Weekly Benefits, and Claim Attributes", 2009

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The low end estimate of the cost impact (including utilization) of the change in maximum PP duration from 375 to 400 weeks is an increase of 7.4% (= 6.7% x 1.1). The high end estimate of the cost impact for this scenario is an increase of 8.7% (= 6.7% x 1.3).

Impact of change from 375 to 400 weeks	Low	High
1. Impact on PP Awards (including utilization)	+7.4%	+8.7%
2. PP Awards % of PP Indemnity Benefits	57.5% ¹⁰	
3. PP Indemnity Benefits % of Indemnity Benefits	69.7% ¹¹	
4. Indemnity Benefits % of Total Benefits	28.0% ¹²	
5. Impact on Montana Workers Compensation System Costs = (1) x (2) x (3) x (4) x (5)	+0.8%	+1.0%

Termination of Medical Benefits, Section 39-71-704

Under this proposal, medical benefits for work-related injuries would terminate 60 months after the date of injury or diagnosis of an occupational disease. A worker would be able to request the reopening of medical benefits for surgical procedures that would allow the worker to continue to work; however, medical benefits closed by settlement or court order would not be subject to reopening. Workers would have to submit their request for reopening of medical benefits to a panel for approval, the details of which are described in the proposal. If medical benefits are reopened, they will remain open for a maximum of two years or until maximum medical improvement is achieved following the surgery, whichever occurs first. This proposal does not apply to a worker who is permanently totally disabled or for the repair or replacement of a prosthesis furnished as a result of a compensable injury.

Currently, except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, medical benefits terminate when they are not used for a period of 60 consecutive months.

Additional attorney involvement is expected if this language is enacted. Courts may find that the proposed changes deprive an injured worker of his or her rights to no-fault workers compensation benefits. Additionally, older workers whose medical benefits have been terminated under this proposal may seek coverage through Medicare. In recent years, the Centers for Medicare and Medicaid Services (CMS) has been more

¹⁰ Based on a sampling of permanent partial claims from NCCI's Detailed Claim Information for accident years 2003-2007

¹¹ Based on NCCI's Statistical Plan data for the 24 month policy period ending 12/31/2007

¹² Based on Financial Call data for policy years 2005-2007, trended to 7/1/2011

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active in enforcing its position as a secondary payer in cases involving workplace injuries. This enforcement has taken several forms including the requirement, in some cases, that funding be set aside for future medical services which may arise from a work related injury. Furthermore, CMS asserts its rights to seek reimbursement for the cost of medical services which might otherwise be payable by CMS for conditions that arose from work related injuries. **NCCI's cost impact analysis does not reflect the cost impacts related to these issues (attorney involvement, legality of language, and reimbursements to CMS).**

Since PTD claims are not limited, and assuming medical-only and temporary total disability (TTD) claims are not open five years after the injury date, NCCI relied on PP data to estimate the cost savings of this proposal. The estimated medical payments after 60 months from the accident date for PP claims were subtracted from their estimated ultimate settlement value, and would be considered cost savings. Using supplemental data and information for policy years 2003 to 2007, medical costs for prosthetics and medical costs from surgeries assumed to occur after 60 months on accepted reopened PP claims were also subtracted from the initial estimated cost savings. Medical cost savings are estimated to be 20.0% to 32.3%. Since medical benefits comprise 72%¹³ of overall workers compensation benefits in Montana, the overall system cost impact from this proposal is estimated to be between -23.3% ($= -0.323 \times 0.72$) and -14.4% ($= -0.20 \times 0.72$) and.

NCCI estimates that the overall impact on Montana workers compensation system cost is estimated to be between -23.3% and -14.4%, if this provision is enacted in its current form.

Retroactive Period, Section 39-71-736

Currently, compensation for disability is not payable for the first 4 days of incapacity no matter how long the injured worker is unable to work.

Introducing a 21-day retroactive period would increase the amount of indemnity benefits payable for TTD and PP claims. The cost of permanent total (PTD) claims would also increase, but only minimally. Based on a distribution of temporary total durations of disability and the increase in number of days benefits would be paid, **NCCI estimates the direct impact on TTD indemnity costs (prior to the consideration of benefit utilization) to be an increase of +4.0%.**

¹³ Based on NCCI Financial Call data for policy years 2005 to 2007, trended to 7/1/2011

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PP indemnity costs are also affected because the majority of PP injuries begin as TTD injuries. **NCCI estimates the direct impact on PP indemnity costs to be an increase of +0.9%.**

These direct cost estimates do not consider the potential indirect impact from possible increased utilization of the workers compensation system by some covered workers. Numerous research reports have confirmed the existence of economic incentives to file claims and prolong durations of disability in the face of increased benefits. As such, this proposal may provide incentives for longer durations on existing claims, and for the filing of new claims, given the eligibility to receive indemnity benefits starting on the first day away from work due to injury under the proposal. The additional indirect costs from these incentives may result in an impact higher than the direct impact noted above.

Most PP claims are not resolved in 21 days. Therefore, in our estimation of the direct impact on PP costs, we assumed that all PP claims would receive compensation for the first four days of incapacity under this proposal. Thus, our estimate of utilization impacts the cost of TTD claims only. Some TTD claims that currently would have durations of less than 21 days may have a higher duration if this proposal is enacted, due to utilization.

NCCI estimates that there may be an incentive for TTD claim costs to increase by up to 50% greater than the direct cost impact. Based on the distribution of the duration of claims, NCCI calculates that this utilization effect could result in an additional 2.0% (=4% x 50%) impact on TTD claim costs. Thus, the increase in benefit costs for TTD claims is estimated to be in the range of 4.0% to 6.0%, using the direct cost impact described above as the lower end of our range of impacts.

	Low	High
Impact on TTD claims	+4.0%	+6.0%
TTD % of Indemnity Benefits	10.9% ¹⁴	
Indemnity % of Total Benefits	28.0% ¹⁵	
Impact on Montana WC system costs	+0.1%	+0.2%
Impact on PP claims	+0.9%	+0.9%
PP % of Indemnity Benefits	69.7% ¹⁶	
Indemnity % of Total Benefits	28.0% ¹⁷	
Impact on Montana WC system costs	+0.2%	+0.2%

¹⁴ Based on NCCI Statistical Plan data for the 24 month policy period ending 12/31/2007

¹⁵ Based on NCCI Financial Call data for policy years 2005 to 2007, trended to 7/1/2011

¹⁶ Based on NCCI Statistical Plan data for the 24 month policy period ending 12/31/2007

¹⁷ Based on NCCI Financial Call data for policy years 2005 to 2007, trended to 7/1/2011

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NCCI estimates that the overall impact on Montana workers compensation system cost is estimated to be between +0.3% and +0.4%, if this provision is enacted in its current form.

Choice of Physician, Section 39-71-1101

Currently in Montana, an injured worker may choose their initial treating physician. If the initial treating physician is not affiliated with a managed care organization (MCO), the worker must change to a treating physician in the MCO, unless otherwise authorized by the insurer.

This proposal allows the injured worker to designate the treating physician; however, upon receipt of a claim for benefits, the insurer may designate the treating physician, who may or may not be part of the MCO.

Studies indicate that costs are considerably higher in states where an employee has complete freedom in the choice of physician. In *The Impact of Provider Choice on Workers' Compensation Costs and Outcomes*, Victor, et al, WCRI (2005), compared employee choice to employer choice systems and found that employee choice systems:

- had medical payments that were 10% to 21% higher and indemnity benefits that were 8% to 15% higher;
- had poorer return-to-work outcomes; and
- generally no difference in physical recovery

Other than a few dense population centers, Montana is generally rural. In these rural areas there may be a limited number of doctors for employers or employees to choose from in some instances. In such cases, the employee sees the same physician regardless of who chooses the treating physician.

Because of the rural nature of the state (and relatively fewer medical service providers), NCCI assumed that there would be less medical and indemnity cost savings than that indicated by the WCRI study.

Impact of Choice of Physician	Indemnity		Medical	
	Low	High	Low	High
WCRI Study	-8.0%	-15.0%	-10.0%	-21.0%
Selected	-3.0%	-10.0%	-5.0%	-16.0%

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Ind/Med Split	28.0%	28.0%	72.0%	72.0%
Overall Impact	-0.8%	-2.8%	-3.6%	-11.5%

The total overall impact is the sum of the overall impact on indemnity and medical.

NCCI estimates that the overall impact on Montana workers compensation system costs is estimated to be between -14.3% to -4.4% if this provision is enacted in its current form. Note that the WCRI study contemplates cost savings due to additional opportunities to negotiate discounts with medical service providers. If discounts are not allowed due to the employer/insurer being required to reimburse providers at the promulgated fee schedule, or some specified percentage deviation as proposed in Section 39-71-1101, the cost savings may be less than assumed in this analysis.

Physician Reimbursement, Section 39-71-1101

Currently in Montana, physicians are reimbursed at 100% of the fee schedule. This proposal would require that:

- The physician who is designated by the insurer to be the treating physician shall be reimbursed at a rate of 110% of the fee schedule.
- A health care provider who provides medical care or a physician that provides care prior to designation as the treating physician would be reimbursed at 100% of the fee schedule.
- A health care provider who the worker is referred to by the treating physician would be reimbursed at 90% of the fee schedule.

Based on stakeholder surveys, NCCI assumed that the proportions of medical benefits by service category and the reimbursement rates are distributed as in the table below:

Service Category	Treating Physician (110%)	Non-Treating Physician (90%)	Prior to Selection of Treating Physician (100%)
Surgery		50%	50%
Radiology		50%	50%
Anesthesia		50%	50%
Medicine	50%		50%
Evaluation & Management	50%		50%

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This table assumes that currently 50% of surgery costs are associated with non-treating physicians and 50% are performed by physicians prior to designation of a treating physician. Similar logic applies to all other service categories. There may be an incentive for physicians to encourage workers to have more services performed if physicians are reimbursed at a lower rate. NCCI considered a range of benefit utilization impacts of up to 30% in our analysis. Based on that range and considering the distribution of losses by service category and their associated impacts, NCCI estimates that this proposal may result in a -0.4% to +0.4% impact on physician costs. Physician costs represent 37.2%¹⁸ of medical costs, and medical costs represent 72.0%¹⁹ of overall system costs.

NCCI estimates that the overall impact on Montana workers compensation system cost is estimated to be -0.1% ($= -0.4 \times 0.372 \times 0.72$) to +0.1% ($= +0.4 \times 0.372 \times 0.72$).

The proposal would also require that medical fee schedule rates in effect through June 30, 2013 may not be less than the rates for medical services in effect as of January 1, 2011. While this provision would not have a direct cost impact at this time, it would prevent any decreases in reimbursement rates that might otherwise occur. With a typical physician fee schedule change, the reimbursement rates for some individual services may decrease due to synergies, efficiencies, market forces or other reasons.

Definition of Course and Scope, Sections 39-71-118 and 39-71-407

The definition of an employee's course of employment for workers compensation purposes under this proposal would specifically exclude:

- Injuries that occur on a paid or unpaid break off the employer's worksite, and where the employee is not performing any duties for the employer during the break; and
- Injuries that occur while the employee is voluntarily engaged in a social or recreational activity, but not performing prescribed duties of employment at the time of injury. The exclusion applies even if the employer pays for some or all of the cost of the activity. This exclusion does not apply if the employee is paid during the time of the activity or is required or requested by the employer to participate in the activity.

The proposal would explicitly apply occupational diseases to the (modified) course and scope provisions.

¹⁸ Distribution of medical losses is based on Montana workers compensation data licensed to NCCI and Montana State Fund data for service year 2008

¹⁹ Based on Financial Call data for policy years 2005-2007, trended to 7/1/2011

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The proposed language also states that the insurer is only liable for an injury if it is established by objective medical findings and if the claimant establishes that it is more probable than not that:

- A claimed injury has occurred; or
- A claimed injury has occurred and aggravated a preexisting condition.

Under the proposal, an insurer would be only liable for a diagnosed condition that is a direct result of a compensable injury if the condition is diagnosed within two years of the injury date. For occupational diseases, there has to be objective medical findings, such that the occupational disease arose out of or is contracted in the course and scope of employment within two years of the date of diagnosis of the compensable occupational disease.

Currently, an insurer is liable for the payment of compensation to an employee who suffers an injury or dies while on break only if the employee is within the course and scope of employment when the cause of injury occurs. Factors that have been used to determine if an employee on break is within the course and scope of employment include:

- The employee is paid during the break,
- The employment contract entitles the employee to the break,
- Restrictions that limit where the employee can go during the break, and
- The employee's activity does not constitute a substantial personal deviation.

An insurer is also currently liable to pay compensation to an employee who suffers an injury or dies while participating in a recreational activity, but only if the employee at the time of the injury is performing prescribed job duties or is not relieved of those prescribed job duties.

The proposed language appears to clarify compensability in situations where it is unclear whether an employee was injured in the course of carrying out work responsibilities. For the vast majority of workers compensation cases, it is clear whether the employee was injured while working.

There may be modest cost savings associated with the proposed language regarding an injury that occurs while an employee is offsite on a paid or unpaid break and is not performing a specific task for the employer. Fewer claims would be compensable under the proposed language.

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However, the impact on system costs is not measurable since records for workers compensation claims generally do not specify in a standardized format whether the claimant was on a break when injured.

Based on the Montana Department of Labor and Industry Employment Relations Division's *2009 Workers Compensation Annual Report* (2009 WCAR), approximately 400 claims per fiscal year are denied due to course and scope of employment criteria. Based on the 2009 WCAR, there are approximately 32,000 claims per fiscal year.

It is anticipated that restricting the liability concerning preexisting conditions and adding a statute of limitations of two years for additional diagnoses on injuries and occupational diseases may also result in some savings. However, since the cost impact depends on claimant, attorney, and employer/carrier behavior, a cost impact cannot be determined. It is likely that this proposal may motivate expedited diagnoses and claim reporting to the insurer.

NCCI anticipates that this proposal concerning the definition of course and scope, if enacted, may result in some modest savings in overall system costs in Montana. The magnitude of the impact is not measurable, however, since the data required to complete such an analysis is not available, and depends on claimant, attorney, and employer/insurer behavior. Any cost savings would be realized in future loss experience and reflected in subsequent Montana loss cost filings.

Settlements, Section 39-71-741

This proposal would allow for the settlement of future medical benefits under the following conditions:

- The claimant has reached maximum medical improvement (MMI).
- The insurer and claimant mutually agree to a settlement.
- The claimant indicates by a signed acknowledgement an understanding of what medical benefits will terminate upon settlement.

Currently, medical benefits may only be settled if an insurer disputes their continued liability for medical benefits, or if there is a reasonable dispute over the medical treatment (where only the funding of the specific disputed treatment may be settled).

If introduced and enacted in its current form, this proposal would expand the conditions under which future medical benefits may be settled with claimants, as described above. The number of settlement agreements involving future medical benefits would be expected to increase if this proposal were enacted. If settlements are generally based on the medical condition of the claimant at the time of settlement, this proposal may

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reduce system costs as insurers obtaining such settlements would be protected from paying medical benefits due to the age-related or non-occupational progression of a work injury over time. However, employees considering settlement may seek the counsel of an attorney and historically the involvement of an attorney results in increased settlement amounts. The degree of savings would likely depend on the insurer's ability to adequately value future medical benefits and the insurer's ability to negotiate with claimants/attorneys, compared to current costs for claims affected by this proposed language. Since these circumstances are dependent on behavior of many parties, they are difficult to explicitly evaluate.

Under the proposal, the injured employee would still need to agree to settle their medical benefits. Injured employees may be reluctant to settle all medical benefits for a claim with the knowledge that all future medical benefits would terminate upon settlement. Employees would be motivated to settle medical costs in certain situations. If the proposal to terminate medical costs 60 months after an injury were enacted, injured employees may wish to request a settlement to include any medical services that would otherwise be provided 60 months after injury. Insurers may be more reluctant to settle in those situations, so the extent of any increase in the number of settlements is uncertain, and more disputes and attorney involvement may result.

If the number of settlements increases, it is likely that claims will close sooner than they do currently. Since costs are generally incurred while a claim file remains open, this proposal may decrease claims handling-related expenses.

NCCI anticipates that this section, if enacted in its current form, may result in some savings in overall system costs in Montana. The magnitude of the impact is not measurable, however, since the data required to complete such an analysis is not available, and the cost impact depends on the behavior of claimants, attorneys, employers/insurers, and the DLI. Any savings would be realized in future loss experience and reflected in subsequent Montana loss cost filings.

Treatment Guidelines, Section 39-71-704

This proposal would require an annual review of the evidence-based utilization and treatment guidelines for the purpose of consideration of amendments or changes to the guidelines. The potential cost impact is unknown at this time and will depend on what changes are made, if any.

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